

REFERENCE TITLE: weapons; peace officers; posse; reserves

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2626

Introduced by
Representative Pearce

AN ACT

AMENDING SECTIONS 11-441, 13-3102, 13-3112 AND 38-1102, ARIZONA REVISED
STATUTES; RELATING TO PEACE OFFICERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 11-441, Arizona Revised Statutes, is amended to
3 read:

4 11-441. Powers and duties

5 A. The sheriff shall:

6 1. Preserve the peace.

7 2. Arrest and take before the nearest magistrate for examination all
8 persons who attempt to commit or who have committed a public offense.

9 3. Prevent and suppress all affrays, breaches of the peace, riots and
10 insurrections which may come to the knowledge of the sheriff.

11 4. Attend all courts, except justice and municipal courts, when an
12 element of danger is anticipated and attendance is requested by the presiding
13 judge, and obey lawful orders and directions issued by the judge.

14 5. Take charge of and keep the county jail, including a county jail
15 under the jurisdiction of a county jail district, and the prisoners in the
16 county jail.

17 6. Endorse upon all process and notices the year, month, day, hour and
18 minute of reception, and issue to the person delivering it, on payment of
19 fees, a certificate showing the names of the parties, title of paper and time
20 of reception.

21 7. Serve process and notices in the manner prescribed by law and
22 certify under the sheriff's hand upon the process or notices the manner and
23 time of service, or if the sheriff fails to make service, the reasons for
24 failure, and return them without delay. When returnable to another county,
25 the sheriff may enclose such process or notices in an envelope, addressed to
26 the officer from whom received, and deposit it postage prepaid in the post
27 office. The return of the sheriff is prima facie evidence of the facts
28 stated in the return.

29 8. Secure, as soon as possible, the home of a deceased person located
30 outside the boundaries of an incorporated city or town if the sheriff is
31 unable to determine or locate the heirs or executor of the deceased person.

32 B. The sheriff may in the execution of the duties prescribed in
33 subsection A, paragraphs 1 through 4 command the aid of as many inhabitants
34 of the county as the sheriff deems necessary.

35 C. The sheriff shall conduct or coordinate within the county search or
36 rescue operations involving the life or health of any person, or may assist
37 in such operations in another county at the request of that county's sheriff,
38 and may request assistance from any persons or agencies in the fulfillment of
39 duties under this subsection.

40 D. The sheriff, in the execution of the duties prescribed in this
41 section, may request the aid of volunteer posse and reserve organizations
42 located in the county.

43 E. The sheriff may assist in the execution of the duties prescribed in
44 this section in another county at the request of that county's sheriff.

F. The sheriff may require any prisoner who is on work release to reimburse the county for reasonable expenses incurred in connection with the release.

G. The board of supervisors of a county bordering the Republic of Mexico may adopt an ordinance pursuant to chapter 2 of this title allowing the sheriff to prevent the entry from this state into the republic of Mexico at the border by any resident of this state who is under eighteen years of age if the minor is unaccompanied by a parent or guardian or does not have written consent for entry from a parent or guardian. The authority of the sheriff is only to prevent entry and not to otherwise detain the minor. This subsection shall not be construed to limit the authority of the sheriff pursuant to any other law. A county is not civilly or criminally liable for not adopting an ordinance pursuant to this subsection.

H. NOTWITHSTANDING SECTION 13-3112, THE SHERIFF MAY AUTHORIZE MEMBERS OF THE SHERIFF'S VOLUNTEER POSSE OR RESERVE ORGANIZATION WHO HAVE RECEIVED FIREARMS TRAINING THAT IS APPROVED BY THE ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD TO CARRY A DEADLY WEAPON WITHOUT A PERMIT.

Sec. 2. Section 13-3102, Arizona Revised Statutes, is amended to read:

13-3102. Misconduct involving weapons; defenses; classification; definitions

A. A person commits misconduct involving weapons by knowingly:

1. Carrying a deadly weapon without a permit pursuant to section 13-3112 except a pocket knife concealed on his person; or

2. Carrying a deadly weapon without a permit pursuant to section 13-3112 concealed within immediate control of any person in or on a means of transportation; or

3. Manufacturing, possessing, transporting, selling or transferring a prohibited weapon; or

4. Possessing a deadly weapon or prohibited weapon if such person is a prohibited possessor; or

5. Selling or transferring a deadly weapon to a prohibited possessor; or

6. Defacing a deadly weapon; or

7. Possessing a defaced deadly weapon knowing the deadly weapon was defaced; or

8. Using or possessing a deadly weapon during the commission of any felony offense included in chapter 34 of this title; or

9. Discharging a firearm at an occupied structure in order to assist, promote or further the interests of a criminal street gang, a criminal syndicate or a racketeering enterprise; or

10. Unless specifically authorized by law, entering any public establishment or attending any public event and carrying a deadly weapon on his person after a reasonable request by the operator of the establishment or the sponsor of the event or the sponsor's agent to remove his weapon and place it in the custody of the operator of the establishment or the sponsor

1 of the event for temporary and secure storage of the weapon pursuant to
2 section 13-3102.01; or

3 11. Unless specifically authorized by law, entering an election polling
4 place on the day of any election carrying a deadly weapon; or

5 12. Possessing a deadly weapon on school grounds; or

6 13. Unless specifically authorized by law, entering a nuclear or
7 hydroelectric generating station carrying a deadly weapon on his person or
8 within the immediate control of any person; or

9 14. Supplying, selling or giving possession or control of a firearm to
10 another person if the person knows or has reason to know that the other
11 person would use the firearm in the commission of any felony; or

12 15. Using, possessing or exercising control over a deadly weapon in
13 furtherance of any act of terrorism as defined in section 13-2301 or
14 possessing or exercising control over a deadly weapon knowing or having
15 reason to know that it will be used to facilitate any act of terrorism as
16 defined in section 13-2301.

17 B. Subsection A, paragraph 1 of this section shall not apply to a
18 person in his dwelling, on his business premises or on real property owned or
19 leased by that person.

20 C. Subsection A, paragraphs 1, 2, 3, 7, 10, 11, 12 and 13 of this
21 section shall not apply to:

22 1. A peace officer or any person summoned by any peace officer to
23 assist and while actually assisting in the performance of official duties; or

24 2. A member of the military forces of the United States or of any
25 state of the United States in the performance of official duties; or

26 3. A warden, deputy warden or correctional officer of the state
27 department of corrections; or

28 4. A person specifically licensed, authorized or permitted pursuant to
29 a statute of this state or of the United States.

30 D. SUBSECTION A, PARAGRAPHS 1 AND 2 OF THIS SECTION SHALL NOT APPLY
31 TO:

32 1. A MEMBER OF A SHERIFF'S VOLUNTEER POSSE OR RESERVE ORGANIZATION WHO
33 HAS RECEIVED FIREARMS TRAINING THAT IS APPROVED BY THE ARIZONA PEACE OFFICER
34 STANDARDS AND TRAINING BOARD AND WHO IS AUTHORIZED BY THE SHERIFF TO CARRY A
35 CONCEALED WEAPON PURSUANT TO SECTION 11-441.

36 2. A RETIRED LAW ENFORCEMENT OFFICER WHO POSSESSES A PHOTOGRAPHIC
37 IDENTIFICATION THAT STATES THE PERSON IS HONORABLY RETIRED FROM A LAW
38 ENFORCEMENT AGENCY IN THIS STATE AND WAS EMPLOYED FULL-TIME BY THE AGENCY FOR
39 AT LEAST TEN YEARS.

40 ~~D.~~ E. Subsection A, paragraphs 3 and 7 of this section shall not
41 apply to:

42 1. The possessing, transporting, selling or transferring of weapons by
43 a museum as a part of its collection or an educational institution for
44 educational purposes or by an authorized employee of such museum or
45 institution, if:

1 (a) Such museum or institution is operated by the United States or
 2 this state or a political subdivision of this state, or by an organization
 3 described in 26 United States Code section 170(c) as a recipient of a
 4 charitable contribution; and

5 (b) Reasonable precautions are taken with respect to theft or misuse
 6 of such material.

7 2. The regular and lawful transporting as merchandise; or

8 3. Acquisition by a person by operation of law such as by gift, devise
 9 or descent or in a fiduciary capacity as a recipient of the property or
 10 former property of an insolvent, incapacitated or deceased person.

11 ~~E.~~ F. Subsection A, paragraph 3 of this section shall not apply to
 12 the merchandise of an authorized manufacturer of or dealer in prohibited
 13 weapons, when such material is intended to be manufactured, possessed,
 14 transported, sold or transferred solely for or to a dealer, a regularly
 15 constituted or appointed state, county or municipal police department or
 16 police officer, a detention facility, the military service of this or another
 17 state or the United States, a museum or educational institution or a person
 18 specifically licensed or permitted pursuant to federal or state law.

19 ~~F.~~ G. Subsection A, paragraph 1 of this section shall not apply to a
 20 weapon or weapons THAT ARE carried in a ~~belt holster which~~ MANNER WHERE ANY
 21 PORTION OF THE WEAPON OR A holster IN WHICH THE WEAPON IS CARRIED is ~~wholly~~
 22 ~~or partially~~ visible, ~~or~~ THAT ARE carried in a scabbard or case designed for
 23 carrying weapons ~~which~~ AND ANY PORTION OF THE WEAPON, scabbard or case is
 24 ~~wholly or partially~~ visible or THAT ARE carried in luggage. Subsection A,
 25 paragraph 2 of this section shall not apply to a weapon or weapons carried in
 26 a case, holster, scabbard, pack or luggage that is carried within a means of
 27 transportation or within a storage compartment, map pocket, trunk or glove
 28 compartment of a means of transportation.

29 ~~G.~~ H. Subsection A, paragraph 10 of this section shall not apply to
 30 shooting ranges or shooting events, hunting areas or similar locations or
 31 activities.

32 ~~H.~~ I. Subsection A, paragraph 3 of this section shall not apply to a
 33 weapon described in section 13-3101, subsection A, paragraph 7, subdivision
 34 (e), if such weapon is possessed for the purposes of preparing for,
 35 conducting or participating in lawful exhibitions, demonstrations, contests
 36 or athletic events involving the use of such weapon. Subsection A, paragraph
 37 12 of this section shall not apply to a weapon if such weapon is possessed
 38 for the purposes of preparing for, conducting or participating in hunter or
 39 firearm safety courses.

40 ~~I.~~ J. Subsection A, paragraph 12 of this section shall not apply to
 41 the possession of a:

42 1. Firearm that is not loaded and that is carried within a means of
 43 transportation under the control of an adult provided that if the adult
 44 leaves the means of transportation the firearm shall not be visible from the

1 outside of the means of transportation and the means of transportation shall
2 be locked.

3 2. Firearm for use on the school grounds in a program approved by a
4 school.

5 ~~J.~~ K. The operator of the establishment or the sponsor of the event
6 or the employee of the operator or sponsor or the agent of the sponsor,
7 including a public entity or public employee, is not liable for acts or
8 omissions pursuant to subsection A, paragraph 10 of this section unless the
9 operator, sponsor, employee or agent intended to cause injury or was grossly
10 negligent.

11 ~~K.~~ L. Misconduct involving weapons under subsection A, paragraph 9,
12 14 or 15 of this section is a class 3 felony. Misconduct involving weapons
13 under subsection A, paragraph 3, 4, 8 or 13 of this section is a class 4
14 felony. Misconduct involving weapons under subsection A, paragraph 12 of
15 this section is a class 1 misdemeanor unless the violation occurs in
16 connection with conduct ~~which~~ THAT violates ~~the provisions of~~ section
17 13-2308, subsection A, paragraph 5, section 13-2312, subsection C, section
18 13-3409 or section 13-3411, in which case the offense is a class 6 felony.
19 Misconduct involving weapons under subsection A, paragraph 5, 6 or 7 of this
20 section is a class 6 felony. Misconduct involving weapons under subsection
21 A, paragraph 1, 2, 10 or 11 of this section is a class 1 misdemeanor.

22 ~~L.~~ M. For the purposes of this section:

23 1. "Public establishment" means a structure, vehicle or craft that is
24 owned, leased or operated by this state or a political subdivision of this
25 state.

26 2. "Public event" means a specifically named or sponsored event of
27 limited duration THAT IS either conducted by a public entity or conducted by
28 a private entity with a permit or license granted by a public entity. Public
29 event does not include an unsponsored gathering of people in a public place.

30 3. "School" means a public or nonpublic kindergarten program, common
31 school or high school.

32 4. "School grounds" means in, or on the grounds of, a school.

33 Sec. 3. Section 13-3112, Arizona Revised Statutes, is amended to read:

34 13-3112. Concealed weapons; qualification; application; permit
35 to carry; certificate of firearms proficiency;
36 training program; program instructors; report;
37 applicability; violation; classification

38 A. The department of public safety shall issue a permit to carry a
39 concealed weapon to a person who is qualified under this section. The person
40 shall carry the permit at all times when the person is in actual possession
41 of the concealed weapon and shall present the permit for inspection to any
42 law enforcement officer on request.

43 B. A person who fails to carry the permit at all times that the person
44 is in actual possession of a concealed weapon may have the permit suspended.
45 The department of public safety shall be notified of all violations of this

1 section and shall immediately suspend the permit. The permittee shall
2 present the permit to the law enforcement agency or the court. On
3 notification of the presentation of the permit, the department shall restore
4 the permit.

5 C. The permit of a person who is arrested or indicted for an offense
6 that would make the person unqualified under section 13-3101, subsection A,
7 paragraph 6 or this section shall be immediately suspended and seized. The
8 permit of a person who becomes unqualified on conviction of that offense
9 shall be revoked. The permit shall be restored on presentation of
10 documentation from the court if the permittee is found not guilty or the
11 charges are dismissed. The permit shall be restored on presentation of
12 documentation from the county attorney that the charges against the permittee
13 were dropped or dismissed.

14 D. A permittee who carries a concealed weapon and who fails to present
15 a permit for inspection on the request of a law enforcement officer is guilty
16 of a petty offense. A permittee shall not be convicted of a violation of
17 this subsection if the permittee produces to the court a legible permit that
18 is issued to the permittee and that was valid at the time the violation of
19 this subsection occurred.

20 E. The department of public safety shall issue a permit to an
21 applicant who meets all of the following conditions:

- 22 1. Is a resident of this state or a United States citizen.
- 23 2. Is twenty-one years of age or older.
- 24 3. Is not under indictment for and has not been convicted in any
25 jurisdiction of a felony.
- 26 4. Does not suffer from mental illness and has not been adjudicated
27 mentally incompetent or committed to a mental institution.
- 28 5. Is not unlawfully present in the United States.
- 29 6. Satisfactorily completes a firearms safety training program
30 approved by the department of public safety pursuant to subsection 0 of this
31 section. This paragraph does not apply to:

32 (a) A person who is an active duty Arizona peace officer standards and
33 training board certified or federally credentialed peace officer or who is
34 honorably retired as a federal, state or local peace officer with a minimum
35 of ten years of service.

36 (b) A person who is an active duty county detention officer and who
37 has been weapons certified by the officer's employing agency.

38 (c) A person who is issued a certificate of firearms proficiency
39 pursuant to subsection X of this section.

40 (d) A PERSON WHO IS A FULL AUTHORITY ARIZONA PEACE OFFICER STANDARDS
41 AND TRAINING BOARD CERTIFIED RESERVE PEACE OFFICER.

42 F. The application shall be completed on a form prescribed by the
43 department of public safety. The form shall not require the applicant to
44 disclose the type of firearm for which a permit is sought. The applicant
45 shall attest under penalty of perjury that all of the statements made by the

1 applicant are true. The applicant shall submit the application to the
2 department with a certificate of completion from an approved firearms safety
3 training program, two sets of fingerprints and a reasonable fee determined by
4 the director of the department.

5 G. On receipt of a concealed weapon permit application, the department
6 of public safety shall conduct a check of the applicant's criminal history
7 record pursuant to section 41-1750. The department of public safety may
8 exchange fingerprint card information with the federal bureau of
9 investigation for federal criminal history record checks.

10 H. The department of public safety shall complete all of the required
11 qualification checks within sixty days after receipt of the application and
12 shall issue a permit within fifteen working days after completing the
13 qualification checks if the applicant meets all of the conditions specified
14 in subsection E of this section. If a permit is denied, the department of
15 public safety shall notify the applicant in writing within fifteen working
16 days after the completion of all of the required qualification checks and
17 shall state the reasons why the application was denied. On receipt of the
18 notification of the denial, the applicant has twenty days to submit any
19 additional documentation to the department. On receipt of the additional
20 documentation, the department shall reconsider its decision and inform the
21 applicant within twenty days of the result of the reconsideration. If
22 denied, the applicant shall be informed that the applicant may request a
23 hearing pursuant to title 41, chapter 6, article 10.

24 I. On issuance, a permit is valid for five years, except a permit that
25 is held by a member of the United States armed forces, including a member of
26 the Arizona national guard or a member of the reserves of any military
27 establishment of the United States, who is on federal active duty and who is
28 deployed overseas shall be extended until ninety days after the end of the
29 member's overseas deployment.

30 J. The department of public safety shall maintain a computerized
31 permit record system that is accessible to criminal justice agencies for the
32 purpose of confirming the permit status of any person who claims to hold a
33 valid permit issued by this state. This information and any other records
34 that are maintained regarding applicants, permit holders or instructors shall
35 not be available to any other person or entity except on an order from a
36 state or federal court.

37 K. Notwithstanding subsection J of this section, it is a defense to
38 any charge for carrying a deadly weapon without a permit by a member of the
39 United States armed forces, including a member of the Arizona national guard
40 or a member of the reserves of any military establishment of the United
41 States, if the member was on federal active duty at the time the permit
42 expired and the member presents documentation indicating release from active
43 duty or reassignment from overseas deployment within the preceding ninety
44 days.

1 L. A permit issued pursuant to this section is renewable every five
2 years. Before a permit may be renewed, a criminal history records check
3 shall be conducted pursuant to section 41-1750 within sixty days after
4 receipt of the application for renewal. For the purposes of permit renewal,
5 the permit holder is not required to submit additional fingerprints.

6 M. Applications for renewal shall be accompanied by a fee determined
7 by the director of the department of public safety.

8 N. The department of public safety shall suspend or revoke a permit
9 issued under this section if the permit holder becomes ineligible pursuant to
10 subsection E of this section. The department of public safety shall notify
11 the permit holder in writing within fifteen working days after the revocation
12 or suspension and shall state the reasons for the revocation or suspension.

13 O. An organization shall apply to the department of public safety for
14 approval of its firearms safety training program. The department shall
15 approve a program that meets the following requirements:

- 16 1. Is at least eight hours in length.
- 17 2. Is conducted on a pass or fail basis.
- 18 3. Addresses all of the following topics in a format approved by the
19 director of the department:
 - 20 (a) Legal issues relating to the use of deadly force.
 - 21 (b) Weapon care and maintenance.
 - 22 (c) Mental conditioning for the use of deadly force.
 - 23 (d) Safe handling and storage of weapons.
 - 24 (e) Marksmanship.
 - 25 (f) Judgmental shooting.
- 26 4. Is conducted by instructors who submit to a background
27 investigation, including a check for warrants and a criminal history records
28 check.

29 P. If approved pursuant to subsection O of this section, the
30 organization shall submit to the department of public safety two sets of
31 fingerprints from each instructor and a fee to be determined by the director
32 of the department of public safety. On receipt of the fingerprints and fee,
33 the department of public safety shall conduct a check of each instructor's
34 criminal history record pursuant to section 41-1750. The department of
35 public safety may exchange this fingerprint card information with the federal
36 bureau of investigation for federal criminal history record checks.

37 Q. The proprietary interest of all approved instructors and programs
38 shall be safeguarded, and the contents of any training program shall not be
39 disclosed to any person or entity other than a bona fide criminal justice
40 agency, except ~~upon~~ **ON** an order from a state or federal court.

41 R. If the department of public safety rejects a program, the rejected
42 organization may request a hearing pursuant to title 41, chapter 6,
43 article 10.

44 S. The department of public safety shall maintain information
45 comparing the number of permits requested, the number of permits issued and

1 the number of permits denied. The department shall annually report this
2 information to the governor and the legislature.

3 T. The director of the department of public safety shall adopt rules
4 for the purpose of implementing and administering the concealed weapons
5 permit program including fees relating to permits and certificates that are
6 issued pursuant to this section.

7 U. This state and any political subdivision of this state shall
8 recognize a concealed weapon, firearm or handgun permit or license that is
9 issued by another state or a political subdivision of another state if both:

10 1. The permit or license is recognized as valid in the issuing state.

11 2. The permit or license holder is all of the following:

12 (a) Not a resident of this state.

13 (b) Legally present in this state.

14 (c) Not legally prohibited from possessing a firearm in this state.

15 V. For the purpose of establishing mutual permit or license
16 recognition with other states, the department of public safety shall enter
17 into a written agreement if another state requires a written agreement.

18 W. Notwithstanding the provisions of this section, a person with a
19 concealed weapons permit from another state may not carry a concealed weapon
20 in this state if the person is under twenty-one years of age or is under
21 indictment for, or has been convicted of, a felony offense in any
22 jurisdiction, even if the person's rights have been restored and the
23 conviction is expunged, set aside or vacated.

24 X. The department of public safety may issue certificates of firearms
25 proficiency according to the Arizona peace officer standards and training
26 board firearms qualification for the purposes of implementing the law
27 enforcement officers safety act of 2004 (P.L. 108-277; 118 Stat. 865; 18
28 United States Code sections 926B and 926C). A law enforcement agency shall
29 issue to a law enforcement officer who has honorably retired a photographic
30 identification that states that the officer has honorably retired from the
31 agency. The chief law enforcement officer shall determine whether an officer
32 has honorably retired and the determination is not subject to review. A law
33 enforcement agency has no obligation to revoke, alter or modify the honorable
34 discharge photographic identification based on conduct that the agency
35 becomes aware of or that occurs after the officer has separated from the
36 agency.

37 Sec. 4. Section 38-1102, Arizona Revised Statutes, is amended to read:

38 38-1102. Carrying of firearms by peace officers; exceptions;
39 definitions

40 A. ~~This state, a county, a city or town or any other political~~
41 ~~subdivision of this state shall not prohibit~~ NOTWITHSTANDING ANY OTHER LAW
42 AND EXCEPT AS PROVIDED PURSUANT TO SUBSECTION B OF THIS SECTION, a peace
43 officer SHALL NOT BE PROHIBITED from carrying a firearm if the peace officer
44 is in compliance with the firearm requirements prescribed by the Arizona
45 peace officer standards and training board.

1 B. A peace officer may be prohibited from carrying a firearm as
2 follows:

3 1. In a jail, correctional facility or juvenile detention facility.

4 2. By order of:

5 (a) The presiding judge or justice when attending any court that is
6 established pursuant to the constitution of this state or title 12, except if
7 the peace officer is providing court security or responding to an emergency.

8 (b) A justice court when attending the justice court, except if the
9 peace officer is providing court security or responding to an emergency.

10 (c) A municipal court when attending the municipal court, except if
11 the peace officer is providing court security or responding to an emergency.

12 3. When the peace officer is relieved of ~~the peace officer's duties~~
13 DUTY and is under a criminal or administrative investigation.

14 4. When in a secured police facility.

15 5. When consuming alcohol at a licensed liquor establishment operated
16 by this state, a county, a city or town, or any other political subdivision
17 of this state, except if the peace officer's employing agency authorizes the
18 consumption of alcohol in the performance of the peace officer's duties.

19 6. In a location prohibited by federal law.

20 7. Pursuant to court order.

21 8. Pursuant to any state or federal law that makes the officer a
22 prohibited possessor.

23 9. When in the judgment of the department head, or the department
24 head's designee, the peace officer exhibits any impairment, including any
25 physical or mental impairment that would cause concern for the well-being and
26 safety of the officer, the officer's law enforcement agency, law enforcement
27 agency employees or the community.

28 C. A law enforcement agency that employs a peace officer may establish
29 rules that are consistent with this section. The law enforcement agency may
30 determine the number, type, model, caliber and brand of firearm and the
31 ammunition that is carried by its peace officers on or off duty.

32 D. This section does not create any civil liability for acting or
33 failing to act.

34 E. For the purposes of this section:

35 1. "Firearm" has the same meaning prescribed in section 13-105.

36 2. "Peace officer" has the same meaning prescribed in section 1-215.

37 3. "Relieved of duty" means when a peace officer is no longer required
38 to perform, either temporarily or permanently, the duties for which the
39 officer was employed.

40 4. "Secured police facility" means a building or structure that is
41 used primarily by a public agency and that is not accessible to the general
42 public except by controlled access.